



GARY R. HERBERT
Governor

GREGORY S. BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

April 18, 2012

Ken Walker, Manager,
Denver Field Division
Office of Surface Mining
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050

SUBJECT: Submission of Proposed Amendment to the Utah Coal Program Required by Utah House Bill 399

Dear Mr. Walker:

The Utah Division of Oil, Gas and Mining (Division), in response to your request of February 24, 2012 and in accordance with 30 CFR § 732.17(f)(1), hereby formally submits the statutory language of Utah House Bill 399 enacted by the 2011 General Legislative Session for consideration and approval as a proposed written amendment to the Utah Coal Program.

This legislation was approved by the Utah Legislature on March 4, 2011 and signed into law by Utah's Governor on March 21, 2011 and is binding on the Division. The Division and OSM have determined that the legislation may constitute a modification of the Utah Coal Program that must be approved by the Secretary pursuant to 30 CFR § 732.17(h) prior to taking effect (30 CFR § 732.17(g)). The legislation does not explicitly require the Division to adopt rules for its implementation, and the Division does not believe that rules are implicitly required to guide or govern implementation of the legislation. Accordingly, the written amendment submitted for approval consists solely of the language of H.B. 399.

In lieu of a timetable for enactment of the proposed modification, the Division will continue to refrain from enforcing this legislation pending OSM's approval or disapproval of the proposed amendment.

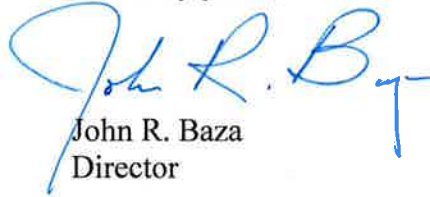
The attached information is being provided in accordance with OSM APPENDIX D: Processing of Formal State/Tribal Regulatory Amendments. The numbering corresponds to the listed requirements in subpart d of the appendix.



Page Two
Ken Walker, H.B. 399
April 18, 2012

The Division welcomes any comments or requests for additional information that the Office may desire to assist in its evaluation of this submission. Please contact me at any time at (801) 538-5334 or johnbaza@utah.gov. Thank you for your consideration and efforts in responding.

Sincerely yours,



John R. Baza
Director

JRB:sls/er
Enclosures

UTAH SUBMISSION OF PROPOSED AMENDMENT TO THE UTAH COAL PROGRAM REQUIRED BY UTAH HOUSE BILL 399

APPENDIX D: Processing of Formal State/Tribal Regulatory Amendments.

1. Concepts and preliminary drafts. The legislative changes in H.B. 399 were not developed by the Division but were the result of independent legislative action that is concluded. Accordingly, no concepts or drafts have been provided. The nature of the changes and the need for this submission have been vetted in OSM's August 8, 2011 request for a response to the Southern Utah Wilderness Alliance's inquiry to OSM, by the Division's resulting October 31, 2011 reply, and by OSM's February 24, 2012 request for this submission. Copies of these letters are attached for reference.
2. Electronic copies. An electronic copy of the amendment and this letter are being sent contemporaneously with the hard copies.
3. (a) Section by Section Comparisons. The statute does not directly modify the existing language of the approved Utah Coal Program as contained in the Utah Coal Mining and Reclamation Act (Utah Code §§ 40-10-1 through 31 (2012)), nor of the rules adopted and approved as Utah Admin. Code R645-100 through 402 (2012). Accordingly, side-by-side comparison or submission of a 'strike-out and additions' version in comparison to existing rules or statutes is not possible.
3. (b) Entire Section Amended. The submission is based on the potential effect of H.B. 399, Environmental Litigation Bond on the judicial review provisions of the Utah Coal Mining and Reclamation Act. The potentially affected sections are referenced in the comparison section below. H.B. 399 is attached as Addendum 1.
3. (c) Summary and Purpose. In summary, the legislation requires that a bond be posted by a plaintiff who obtains a "stay or other temporary remedy issued by an agency under Utah Code 63G-4-405", for an "environmental action". An "environmental action" is defined as an action that "seeks judicial review of a final agency action to issue a permit by . . . the Utah Department of Natural Resources." The Board of Oil, Gas and Mining and the Division are entities created within the Department of Natural Resources (Utah Code §§ 40-6-4(1) and 40-6-15). The Board has jurisdiction to hear administrative appeals of a decision to grant or deny a permit to conduct coal mining and reclamation operations (Utah Code § 40-10-14). Accordingly, an action seeking judicial review of a decision by the Board granting, denying or modifying a permit for a coal mining operation is subject to H.B. 399's bonding and other requirements.

The apparent purpose of the legislation is to protect and compensate operators for damages associated with delays caused by a stay of a permit decision if a stay is granted pending judicial review.

3. (d) The Effect of H.B. 399.

A. The Utah judicial review process for coal mining permit decisions prior to H.B. 399.

Utah's appellate review process under the Utah Coal Act, provides that judicial review of a permit decision by the Board is taken directly to the Utah Supreme Court (Utah Code §§ 40-10-14(6) and 40-10-30). In addition, the Act provides that "judicial review of adjudicative proceedings under [the Act] is governed by Title 63G, Chapter 4, Administrative Procedures Act, and provisions of this chapter consistent with the Administrative Procedures Act." (Utah Code § 40-10-30(1)). Although there are no provisions governing the granting a stay pending a judicial appeal within the language of the Utah Coal Act or its rules, the referenced Utah Administrative Procedures Act (UAPA) does include the provisions at Utah Code § 63G-4-405 governing an agency's granting a stay or other temporary relief pending judicial review. These UAPA requirements do not include provisions requiring or allowing a bond pending appeal.

B. Changes to the Utah judicial review process for coal mining permit decisions as a result of H.B. 399.

H.B. 399 adds to the requirements of Utah Code § 63G-4-405 by requiring a court or an agency granting an "administrative stay" for certain types of "environmental actions" to require a bond that is sufficient to compensate each defendant opposing the stay for damages he may sustain as a result of the stay or temporary relief. In addition, H.B. 399 requires an award of damages against a plaintiff who obtains a preliminary injunction or administrative stay under this provision "but does not ultimately prevail on the merits." The Act provides that the court shall apply the bond to satisfy damages of defendants and if the bond is insufficient the court shall order the plaintiff to pay any remaining uncompensated damages. A decision not to require a bond is subject to immediate appeal. The law is incorporated into Title 78B, Judicial Code as an additional section (828) in Chapter 5, Procedures and Evidence.

Although appeals of the Board's administrative adjudications of coal mining permit decisions are taken directly to the Utah Supreme Court, the issuance of a stay must first be considered by the administrative agency. (Utah Rules of Appellate Procedure (URAP), Rule 8(a)). Accordingly any stay sought for a judicial appeal of a permit decision under the Utah Coal Act is subject to the H.B. 399 changes.

C. Comparison of the H.B. 399 requirements to the Approved Program and to SMCRA requirements for an approved program.

(i). Requiring a Bond for Damages as a condition to obtaining a stay.

The UAPA provisions currently discuss the basis for determining if a stay should be granted or denied based on the likelihood of prevailing on the merits and the balancing of interests. Presumably H.B. 399 will not modify these requirements but will add the additional condition of requiring a bond if the requirements are met. The current UAPA

statute does not include any provision allowing or requiring a bond as a condition for a stay. Therefore, in this respect, the requirements that a plaintiff provide a bond as a condition for a stay as imposed by H.B. 399 are entirely new.

Because the bonding requirements are new they constitute additional burdens on parties seeking to stay a decision pending judicial review. The effect of the new provisions may be to discourage citizens from seeking stays pending review and may therefore discourage appeals. The effect is not to preclude judicial review where a stay is not sought. The intent of the change is to allow mining to proceed while a permit is being reviewed.

The provisions at 30 CFR § 732.15 set out the criteria for approval or disapproval of State Programs. These criteria also apply to State Program amendments pursuant to 30 CFR § 732.17(h)(10). Subpart 30 CFR § 732.15(b)(15) requires that the state program must include provisions that provide for judicial review of State program actions that are “in accordance with State law, as provided in section 526(e) of the Act [SMCRA].” This provision also requires that “[j]udicial review in accordance with State law shall not be construed to limit the operation of rights established in section 520 of the Act, except as provided in that section.”

Section 520 of the Act, subpart (d), includes a provision that may be compared to the requirements of H.B. 399. The second sentence of subpart (d) deals with bonding when a temporary stay pending a judicial review is sought. It states: “The court may, if a temporary restraining order or preliminary injunction is sought require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.” Rule 62. Stay of Proceedings to Enforce Judgment; Federal Rules of Civil Procedure, permits the court to require a bond for damages resulting from a stay. Rule 65. Injunctions and Restraining Orders requires posting “a security in an amount sufficient to pay the costs and damages sustained by a party found to have been wrongly enjoined.” Analysis of the application of this language by the courts in comparison to the provisions of H.B. 399 is beyond the requirements of this submission.

(ii). Damages Against Unsuccessful Plaintiffs.

There is no provision in the Utah Coal Program or in the referenced provisions of the UAPA that allows for an award of general damages against an unsuccessful party who seeks a stay or other temporary relief as part of filing for judicial review. Also, although the language of section 520 of the Act may require a bond, that section does not allow for an award of damages for any deficiency as is provided for in H.B. 399. 30 USC § 1255, State Laws, includes a provision that a state law not contained in SMCRA is not construed to be inconsistent. 30 USC § 1255(b) states “Any provision of any State law or regulation in effect on August 3, 1977, or which may become effective thereafter, which provides for control and regulation of surface mining and reclamation operations for which no provision is contained in this chapter shall not be construed to be inconsistent with this chapter.”

3. (e) and (f). See response in 3(a).

3. (g) There has been no challenge to the legislation. For the purposes of this submission it is assumed that H.B. 399 would be upheld and does not conflict with any State constitutional provisions.

ADDENDA

1. Utah H.B. 399, Enrolled Copy.
2. Correspondence:
 - i. OSM's August 8, 2011 Request for Response to Southern Utah Wilderness Alliance's inquiry to OSM
 - ii. Division's October 31, 2011 Reply
 - iii. OSM's February 24, 2012 Request for Submission of Amendment.

ENVIRONMENTAL LITIGATION BOND

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill requires a plaintiff requesting a preliminary injunction or an administrative stay to post a bond.

Highlighted Provisions:

This bill:

- requires a plaintiff to post a bond before receiving a preliminary injunction or administrative stay;
- requires an unsuccessful plaintiff to pay damages to defendants who are harmed by a preliminary injunction or administrative stay; and
- provides for an immediate appeal of a court's or agency's refusal to require the bond.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-5-828, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-5-828** is enacted to read:

78B-5-828. Bond required in an environmental action.

(1) As used in this section:

30 (a) "Administrative stay" means a stay or other temporary remedy issued by an agency
31 under Section 63G-4-405.

32 (b) "Environmental action" means a cause of action that:

33 (i) is filed on or after May 10, 2011; and

34 (ii) seeks judicial review of a final agency action to issue a permit by:

35 (A) the Department of Natural Resources;

36 (B) the Department of Transportation; or

37 (C) the School and Institutional Trust Lands Administration.

38 (c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in
39 the plaintiff's favor on at least one cause of action.

40 (2) A plaintiff who obtains a preliminary injunction or administrative stay in an
41 environmental action, but does not ultimately prevail on the merits of the environmental action,
42 is liable for damages sustained by a defendant who:

43 (a) opposed the preliminary injunction or administrative stay; and

44 (b) was harmed by the preliminary injunction.

45 (3) A court may not issue a preliminary injunction and an agency may not grant an
46 administrative stay in an environmental action until the plaintiff posts with the court or the
47 agency a surety bond or cash equivalent:

48 (a) in an amount the court or agency considers sufficient to compensate each defendant
49 opposing the preliminary injunction or administrative stay for damages that each defendant
50 may sustain as a result of the preliminary injunction or administrative stay;

51 (b) written by a surety licensed to do business in the state; and

52 (c) payable to each defendant opposing the preliminary injunction or administrative
53 stay in the event the plaintiff does not prevail on the merits of the environmental action.

54 (4) If there is more than one plaintiff, the court or agency shall establish the amount of
55 the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.

56 (5) (a) If the plaintiff does not ultimately prevail on the merits of the environmental
57 action, the court shall execute the bond and award damages to each defendant who:

58 (i) opposed the preliminary injunction or administrative stay; and
59 (ii) was harmed as a result of its issuance.
60 (b) If the amount of money secured by the surety bond or cash equivalent:
61 (i) exceeds the damages awarded, the court or agency shall return the excess to the
62 plaintiff; and
63 (ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay
64 the remaining damages.
65 (6) Notwithstanding any other provision of law, a court's or agency's refusal to require
66 the posting of a surety bond or cash equivalent as required by this section is subject to
67 immediate appeal.



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



August 8, 2011

Stephen Bloch, Attorney
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

Dear Mr. Bloch:

Thank you for your May 16, 2011, letter notifying OSMRE of recently enacted Utah H.B. 399 (Environmental Litigation Bond). H.B. 399, in pertinent part, mandates that state agencies and courts require plaintiffs who obtain temporary relief (administrative stay or preliminary injunction) in an environmental action to post a surety bond or equivalent "in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay." You assert that this bonding requirement is inconsistent with SMCRA and that the Utah State Legislature's passing of H.B. 399 equates to a "de facto" amendment to Utah's State Program that was not adopted through the formal State program amendment regulatory process. As a result, you state that 30 CFR §732.17(g) prohibits the State of Utah from immediately enforcing the terms of Utah Code Ann. §78B-5-828(b) (ii) (A) as it pertains to Utah's State program until approved as an amendment. This letter serves as an interim response to your request that OSMRE expressly direct the State of Utah and DOGM accordingly.

A preliminary review of H.B. 399 indicates that the newly-enacted environmental litigation bond provisions may have resulted in a change in State law that affects the implementation and enforcement of the approved Utah program. As a result, we have sent a letter to DOGM asking them to address SUWA's assertions and express their views on how they plan to implement and enforce the provisions of the environmental litigation bond. Once we receive a response from DOGM, we will follow-up with you regarding our course of action. Thank you again for bringing this matter to OSMRE's attention.

Sincerely,

Kenneth Walker
Chief, Denver Field Division

cc: John Baza, Director, Utah Division of Oil, Gas and Mining



GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

October 31, 2011

Mr. Kenneth Walker, Chief, Denver Field Division
U.S. Department of the Interior
Office of Surface Mining, Reclamation, and Enforcement
1999 Broadway, Suite 3320
Denver, CO 80202-3050

Dear Mr. Walker:

This letter replies to your correspondence to me dated August 8, 2011. In that letter, you requested that:

"DOGM address the assertions made by SUWA and determine whether H.B. 399 equates to a change in the approved Utah program."

The approved Utah program consists of the set of Utah laws and the corresponding rules that comprise the Coal Regulatory Program of the Utah Division of Oil, Gas, and Mining ("DOGM"). The Utah program must contain the provisions as outlined in 30 CFR §732.15, including providing for judicial review of State program actions. H.B. 399 represents a modification to the Judicial Code, Title 78 of the Utah Code that requires certain court actions when a plaintiff both (1) files an "environmental action" (as defined in H.B. 399, an environmental action is a cause of action that seeks judicial review of a final agency action to issue a permit by the Department of Natural Resources) and (2) "obtains a preliminary injunction or administrative stay in an environmental action."

It is not clear whether the passage of H.B. 399 represents a change in State law from those contained in the approved State program. In fact, it appears that the provisions identified in 30 CFR §732.15 remain intact with the passage of H.B. 399. It is also not clear whether H.B. 399 has modified the rights of any party for judicial review in a manner that would no longer satisfy the requirements of 30 CFR §732.15(15). That section requires that judicial review in accordance with state law shall not be construed to limit the rights established in section 520 of the Act. Section 520 (30 U.S.C. 1270) provides for citizen suits against a state agency. The only portion of that section that may be affected by HB 399 is subpart (d) that addresses the issuance of temporary restraining orders or preliminary injunctions, and the rights to recover attorney fees. The section allows a court to require a bond in accordance with the federal rules of civil procedure when a temporary restraining order or preliminary injunction is sought. It is not clear that the provisions of HB 399 are inconsistent with the provisions for bonding set out in the federal rules.



Page 2
Mr. Kenneth Walker
October 31, 2011

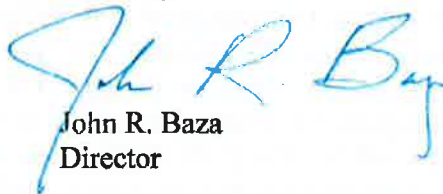
The Utah Coal Act, Utah Code 40-10-30(1) states that the Utah Administrative Procedures Act governs judicial review of adjudicative proceedings, and section 63G-4-405 of that Act also establishes standards that govern the issuance of a preliminary injunction or other temporary remedy when seeking judicial review of an administrative decision. The same question may be raised about this provision and whether it improperly limits the rights to bring a citizen suit under section 520.

In summary, although H.B. 399 may have created an additional requirement for a plaintiff, there is certainly no prohibition against a party filing an environmental action, and court action in the form of a bond requirement would occur only when an injunction or stay is obtained. It is unclear if the requirement for a bond in the event of a stay and the consequences regarding attorney fees set out in HB 399 improperly limits the rights to judicial review provided for in Section 520. It would seem then, that H.B. 399 has limited effect on the implementation of SMCRA and the administration of the Utah Coal Regulatory Program.

Having said that, I recognize that HB 399 may be determined by the Secretary to constitute a modification of Utah's Coal Program and be subject to the Secretary's approval. In such case, proceeding without the Secretary's concurrence that the bill is not a modification requiring approval, might subject the state to litigation and potential liability for fees. There may be other federal laws and regulations that apply to the situation in Utah, and I have no expertise in that regard. I would therefore defer to and await a determination by OSMRE whether passage of H.B. 399 represents a change in State law from that contained in the approved State program. If OSMRE finds that such is the case, then DOGM would seek legislative action to modify the language contained in H.B. 399.

I look forward to further clarification from OSMRE in this matter.

Sincerely,



John R. Baza
Director



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



February 24, 2012

Mr. John Baza, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Dear Mr. Baza:

OSMRE received a letter from the Southern Utah Wilderness Alliance (SUWA) on May 16, 2011, notifying us of recently enacted Utah H.B. 399 (Environmental Litigation Bond). H.B. 399 enacted a change to the Judicial Code, Title 78 of the Utah Code, that in pertinent part, mandates that state agencies and courts require plaintiffs who obtain temporary relief (administrative stay or preliminary injunction) in an environmental action to post a surety bond or equivalent "in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay." Utah Code Ann. § 78B-5-828(3) (a). SUWA alleged that this bonding requirement is inconsistent with SMCRA and that the Utah State Legislature's passing of H.B. 399 equates to a "de facto" amendment to Utah's State Program that was not adopted through the formal State program amendment regulatory process. SUWA further contended that the Federal regulation at 30 C.F.R. § 732.17(g) prohibits the State of Utah from immediately enforcing the terms of Utah Code Ann. § 78B-5-828(1) (b) (ii) (A) as it pertains to Utah's State program until approved as an amendment.

OSMRE's preliminary review of H.B. 399 found that the newly-enacted environmental litigation bond provisions may have resulted in a change in State law that affects the implementation, administration or enforcement of the approved Utah program under 30 C.F.R. § 732.17(e) (2). As a result, in a letter dated August 8, 2011, OSMRE requested that DOGM address the assertions made by SUWA and determine whether H.B. 399 equates to a change in the approved Utah program.

You responded on October 31, 2011, by stating that the Utah program must contain the provisions as outlined in 30 C.F.R. § 732.15 including providing for judicial review of State program actions. You also stated that H.B. 399 represents a modification to the Judicial Code, that requires certain court actions when a plaintiff both (1) files an "environmental action" (as defined by H.B. 399 an environmental action is a cause of action that seeks judicial review of a final agency action to issue a permit by the Department of Natural resources) and (2) "obtains a preliminary injunction or administrative stay in an environmental action." You explained that (1) it is not clear whether the passage of H.B. 399 represents a change in State law from those

contained in the State program, (2) it is not clear whether H.B. 399 has modified the rights of any party for judicial review in a manner that would modify the requirements of 30 C.F.R. § 732.15, and (3) it is not clear that the provisions of H.B. 399 are inconsistent with the provisions for bonding set out in the Federal rules.

Your letter continues that although H.B. 399 may have created an additional requirement for a plaintiff there is no prohibition against a party filing an environmental action, and court action in the form of a bond requirement would occur only when an injunction or stay is obtained. You then state it is unclear if the requirement for a bond in the event of a stay and the consequences regarding attorney fees set out in H.B. 399 improperly limits the rights to judicial review provided for in Section 520 of SMCRA. You recognize that H.B. 399 may be determined to constitute a modification to Utah's Coal Program and be subject to the Secretary's [OSMRE's] approval. You further note that proceeding without the Secretary's concurrence that the bill is not a modification requiring OSMRE approval might subject the State to litigation and potential for liability for fees. You conclude by deferring to OSMRE for a determination whether passage of H.B. 399 represents a change in State law from that contained in the approved State program. You also indicate that if OSMRE decides that such a change has occurred, you will seek legislative action to modify the language contained therein.

The sole purpose of this letter is to advise you of OSMRE's determination of whether H.B. 399 equates to a change in the approved Utah program that requires the submission of a State program amendment. Under 30 C.F.R. § 732.17(e) (2), State program amendments may be required when conditions or events change the implementation, administration or enforcement of the State program.

As your letter notes, the Utah Coal Act, Utah Code 40-10-30(1) provides that the Utah Administrative Procedures Act (Utah APA) governs judicial review of adjudicative proceedings. Section 63G-4-405 of the Utah APA allows a state agency, unless precluded by another statute, to grant a stay of its order or other temporary remedy during the pendency of judicial review. That section requires that parties "shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention." *Id.* § 405(2). Section 63G-4-405 of the Utah APA does not require the posting of a bond prior to agency's stay or its order or other temporary remedy.

H.B. 399 defines "Administrative stay" as a stay or other temporary remedy issued by an agency under Section 63G-4-405. Utah Code Ann. § 78B-5-828(1) (a). In the context of judicial review of Utah's approved program, H.B. 399 appears to require the posting of a bond prior to the Utah Board of Oil, Gas, and Mining's issuance of an administrative stay or other temporary remedy pending state judicial review. By imposing the new procedural requirement of posting a bond where no such requirement previously existed, H.B. 399 appears to have effected a change in the State law that affects the implementation and enforcement of the approved Utah program.


Similarly, to the extent it has created a new procedural requirement for obtaining preliminary injunctive relief from a State court exercising judicial review pursuant to Section 520 of SMCRA, H.B. 399 appears to have changed State law in a manner that affects the

implementation, administration or enforcement of the approved Utah program. We acknowledge your position that it is unclear whether such H.B. 399 has altered the rights of any party to seek judicial review inconsistent with Section 520. However, in accordance with 30 C.F.R. § 732.17(a) through (g), OSMRE is not, at this time, determining whether the changes made by H.B. 399 are consistent with SMCRA and the Federal regulations. As noted, the sole question before OSMRE is whether H.B. 399 equates to a change in the approved Utah program that requires the submission of a State program amendment.

In compliance with the aforementioned Federal regulations, and for the reasons noted above, we have determined that the changes to the Utah Code made by H.B. 399 represent a condition or event that has changed the implementation, administration or enforcement of the approved Utah program for purposes of 30 C.F.R. § 732.17(e) (2). Consequently, DOGM must submit the proposed changes contained in H.B. 399 to OSMRE as an amendment to its Coal Program regulations for review and approval before they can take effect.

Thus, in accordance with 30 C.F.R. § 732.17(f)(1), I request that, within 60 days of receiving this letter, you submit either proposed written amendments or a description of amendments you propose and a timetable for enactment. Your timetable should include the dates by which you plan to submit the amendments and a schedule for the Utah legislative and rulemaking processes. Once received, OSMRE will review the proposed amendment on its merits and either approve or disapprove it in accordance with the regulatory review requirements under 30 C.F.R. § 732.17(h). Please address your submittals to Ken Walker, Manager, Denver Field Division. Also, please direct any questions or requests for assistance to Mr. Walker at (303) 293-5012.

We look forward to working with you.

Sincerely,

Allen D. Klein
Regional Director

cc: Stephen Bloch, Attorney, Southern Utah Wilderness Alliance